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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

BCX INTERNATIONAL, INC., U.S.A., et al., Plaintiffs and Appellants, v. MERV YORK, Defendant and Respondent.	B198375 (Los Angeles County Super. Ct. No. TC 016695)

APPEAL from an order of the Superior Court of Los Angeles County, William P. Barry, Judge. Affirmed.

Law Office of Maria W. Tam and Maria W. Tam for Plaintiffs and Appellants.

Buchalter & Nemer, Richard P. Ormond, Robert M. Dato and Efrat M. Cogan for Defendant and Respondent.

In this contract action, the trial court declared a mistrial during a jury trial when plaintiff BCX International, Inc., U.S.A. (BCX), a Massachusetts corporation, revealed that it was not registered to transact intrastate business in California. The trial court denied defendant Merv York's motion to dismiss for lack of capacity and instead stayed the action to permit BCX to obtain a certificate of qualification. The court also ordered BCX to pay York over $118,000 in attorney's fees and costs as sanctions under Code of Civil Procedure section 128.7, subdivision (b)(1) for bringing the action for an improper purpose.

BCX appeals from the portion of the trial court's order regarding corporate status and plaintiff's payment of defendant's fees and costs which required BCX to pay York sanctions. BCX contends the trial court erred in granting a mistrial rather than continuing with the jury trial, erred in imposing the burden of proof regarding BCX's capacity to sue on BCX, abused its discretion in imposing sanctions in the amount of $118,584.95 on BCX, and exhibited racial prejudice in its ruling and reasoning. We disagree and affirm.

RELEVANT BACKGROUND

Plaintiff BCX[1] filed this action in February 2003 against a number of entities, including Y-III Holdings, Inc., California Drum and Rotor, Apollo Automotive Parts Warehouse, Judy Atkinson, and Merv York. The business entity defendants filed for bankruptcy and the bankruptcy court lifted the automatic stay only as to the individual defendants. BCX accordingly styled its action as one for breach of a personal guaranty.

The second amended complaint alleged that BCX, "a corporation organized and existing under the laws of the State of Massachusetts with its principal business office in Boston, Massachusetts[,]"entered into a series of written contracts with the business entity defendants for the purchase of certain auto parts, beginning in January 2001.

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[1] Although another entity, Beijing Concord Auto Technology Ltd., a Chinese corporation, is listed in the caption of the second amended complaint, it was not mentioned in the text of the pleading. The trial court subsequently granted defendant's motion for a nonsuit against this plaintiff.

Defendants allegedly failed to make timely payments in August 2002 and by January 2003 owed plaintiff over $900,000. BCX alleged that defendant Merv York, a principal and/or president of each of the defendant companies, had personally guaranteed payment for goods sold and that, as a result of that personal guarantee, BCX continued to sell after the slow payment issues arose. BCX also asserted causes of action for fraud and deceit, and intentional and negligent misrepresentation.

BCX's third amended complaint, filed in March 2006, similarly identified plaintiff as a Massachusetts corporation with its principal business office in Boston. BCX's prayer for general damages was reduced significantly to $472,431.26.

At trial, Xiang Cai testified that he was the president of BCX established in America in August 1998. Mr. Cai moved to the United States in May 2000. He began doing business with Merv York and California Drum and Rotor (CDR) that same month.

Mr. York testified that Mr. Cai came to the offices of CDR in California to execute the various sales contracts between BCX and CDR, or York would fax the contracts to Mr. Cai at a number in the 909 area code, also in California.

During the trial, the following exchange occurred during cross-examination of Mr. Cai:

"[DEFENDANT'S COUNSEL:] Plaintiff, B.C.X., is incorporated in the State of Massachusetts; is it not?

"[MR. CAI:] Yes.

"[DEFENDANT'S COUNSEL:] And it was incorporated according to Massachusetts law; was it not?

"[MR. CAI:] Yes.

"[DEFENDANT'S COUNSEL:] And B.C.X. is registered to do business with the Secretary of the State in California, correct?

"[MR. CAI:] No.

"[DEFENDANT'S COUNSEL:] It's not registered to do business in California?

"[MR. CAI:] No. I registered it in Boston.

"[DEFENDANT'S COUNSEL:] It's incorporated in Boston, correct?

"[MR. CAI:] Yes.

"[DEFENDANT'S COUNSEL:] Are you saying that you are not authorized to do business in California?

"[Objection overruled.]

"[MR. CAI:] Not authorized, no.

"[DEFENDANT'S COUNSEL:] Did you register your company with the Secretary of the State of California to do business in California?

"[MR. CAI:] Registered in California, I believe so.

York's Motion to Dismiss

Approximately two days later, defendant York served his motion to dismiss and request for payment of court costs and attorneys' fees on the ground that BCX was a suspended corporation. BCX's counsel explained that her client was a Massachusetts corporation in good standing. York's counsel reported that "BCX" was registered in 1996 with the State of California, then suspended by the Secretary of State in 1998. The Franchise Tax Board also suspended the company for failure to pay taxes.

The trial court indicated it was inclined to declare a mistrial and rejected BCX's counsel's suggestion that the court complete the jury trial and then address the issue of BCX's capacity.

The next day, October 3, 2006, the court heard argument from counsel on York's motion to dismiss. York contended that if in fact BCX was a Massachusetts corporation, the evidence showed that it was conducting intrastate business in California and was required to register accordingly. Alternatively, if BCX was a California corporation, it lacked capacity to proceed because it had been suspended. The court asked counsel to confirm the court's understanding that BCX conceded that "B.C.X. International is not presently certified to conduct business in the [S]tate of California, and it may actually have its status suspended." Both parties' counsel stated the court's understanding was correct.

To establish that BCX had transacted intrastate business, York's counsel offered documentary evidence, including communications exchanged between BCX and York's company that listed BCX as "BCX International, Inc." (not Inc., U.S.A.) and that were faxed to BCX at the 909 area code fax number. Mr. Cai's discovery verifications stated that BCX was qualified to do business in California. In addition, counsel pointed to Mr. Cai's testimony that BCX received goods in California from China, and that Mr. Cai personally authorized delivery of those goods to CDR in California.

BCX's counsel maintained that BCX's office was in Massachusetts and the company had no employees or bank account in California. Mr. Cai's only "business" in California was to meet with Mr. York about the slow payment problems.

The court noted that at least one exhibit listed a San Bernardino address for BCX, observing: "There's no reason I can think of why someone would use a 9-0-9 fax number if they're just receiving something electronically if they want to receive it in Massachusetts, unless they in fact had an office out here in the 9-0-9 area code." The court offered the parties an opportunity to brief the issue of California's requirements for conducting intrastate business but did not want to do so in the middle of the trial. The court stated it would declare a mistrial if the parties wished to address the motion to dismiss, explaining that it would reset the trial if, after affording BCX time to cure any defects in its California registration, BCX met all state requirements for proceeding with the action. The court further indicated it would "listen to what [York's counsel] will have to say" regarding fees and costs. BCX's counsel asked the court for the applicable Corporations Code sections but did not ask for time to cure the registration defects.

The court declared a mistrial on the grounds that the trial could not go forward with the threshold issue of BCX's capacity unresolved. "The defendant has presented a prima facie case of a defect in the plaintiff's right to bring and maintain this action, and that issue needs to be resolved." Recognizing that "in the ideal world," the issue would have been resolved prior to trial, the court determined it had no choice. The court estimated that about 30 days would be needed to brief, hear, and resolve the matter, and it would not be efficient or effective to excuse the jury panel for so long. Additionally, "we

didn't pick them with that thought in mind. I don't have any idea what kind of personal exposure they may have to issues involving foreign corporations or business transactions that may prejudice them in the long term by being exposed to some information that might make it difficult for them to deliberate." Also, there were no more alternates. Under the circumstances, the court stated it had to excuse the panel. The court then asked: "Does anyone object to my granting this mistrial under the circumstances?" Plaintiff's counsel responded: "That will be fine." York's counsel said he had no objection. Plaintiff did not request an opportunity to register in lieu of a mistrial.

On November 3, 2006, the court ruled on the motion to dismiss, finding that York had not waived the lack of capacity defense and finding that BCX International, Inc., U.S.A. regularly engaged in intrastate business in California before, during, and after the events that gave rise to the lawsuit: "As part of its business, it imports goods from China into Southern California ports, where the goods are off-loaded, and delivered to customers. Defendant York and his now bankrupt companies were based in California. The goods were delivered to them here." Mr. Cai communicated with Mr. York from a location in California. BCX never registered with California's Secretary of State and was "not authorized to bring or maintain this lawsuit."

The court then stated BCX had two choices at that point: "They can either ask for time to cure the flaw or I will have to dismiss the lawsuit." Counsel responded: "[W]e respectfully pray that your honor will give us time to cure any inadequacy." Counsel sought and received 60 days to cure the registration defects, and the trial court set January 12, 2007 as the date for BCX to demonstrate its compliance.

On January 10, 2007, BCX submitted a Certificate of Status Foreign Corporation from the California Secretary of State certifying that BCX had complied on November 22, 2006 with California's requirements for qualifying to transact intrastate business in California. BCX also submitted copies of the first two pages of its California tax returns for the years 2002 through 2005, as well as copies of the checks purportedly sent to satisfy its tax obligations. At the hearing on January 12th, however, there was a question regarding the date BCX stated it began transacting business. BCX's counsel asked for

one week to clarify that its accountant had made a typographical error, which the court granted.[2] By minute order on January 29, 2007, the trial court accepted BCX's explanation but determined that the documents BCX submitted "do not establish that it is now a corporation in good standing with the State of California. Plaintiff used the wrong form and made the mistakes on its tax returns. No response from the FTB or the Secretary of State's office has been provided." The court continued the motions to dismiss and for additional attorney's fees and costs to March 12, 2007, at which time it found BCX was currently in good standing and set new trial dates.

York's Motion for Payment of Attorney's Fees and Costs

The court also ruled on York's motion for fees and costs under Code of Civil Procedure section 128.5. The court observed that BCX "did not oppose this motion, or object to any part of it." The court stated that section 128.5 did not apply to cases filed after 1994, but a factual basis existed for sanctions: "Mr. Cai probably made a deliberate decision to engage in intrastate business without registering. He allowed BCX's registration to lapse in 2001, and used a new company, BCX USA, which he did not register, to operate in California as before. His evasive testimony, oral and written, appears to have been part of a scheme to conceal BCX USA's illegal status. BCX USA intended to use the California legal system to its advantage, even though he and possibly BCX USA's attorney knew that this lawsuit was subject to dismissal at any time. The trial was a waste of time for all concerned, including the jury. To gamble that the company's lawsuit could proceed to judgment without its status being discovered was a bad faith action or tactic." The court directed York's counsel to file a supplemental schedule of fees and costs allocated to trial and nontrial work. The court also set a new briefing schedule and hearing date.

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[2] BCX's accountant apparently submitted the wrong "Statement of Information" form to the Secretary of State, which required additional time to correct and resubmit.

York filed a supplemental motion for payment of sanctions under California Code of Civil Procedure sections 128.7 and 2023.030, California Rules of Court, rule 227 (now rule 2.30), and Local Rules of Los Angeles County Superior Court, rules 7.13 and 8.0. York contended sanctions should be awarded against both BCX's counsel and BCX under section 128.7. He further maintained that section 2023.030 permitted sanctions for misuse of the discovery process, specifically, for four discovery response verifications in which Mr. Cai misrepresented BCX's corporate status in the State of California.

BCX opposed the supplemental motion, arguing that it did not know of the registration requirements, was in the process of satisfying them, and had relied on its tax advisor with respect to the registration obligation. BCX denied misleading the court or defendant, citing documents in which it had stated it was a Massachusetts corporation, as well as the inconsistent references to BCX International, Inc. (the suspended California corporation) and BCX International, Inc., U.S.A. (the Massachusetts corporation in good standing). The discovery verifications, moreover, were an honest mistake of BCX's counsel.

The court explained the basis for its conclusion that monetary sanctions against BCX were "clearly" proper under section 128.7:

". . . Mr. Cai knew or certainly should have known, but in the court's view, probably did know, that he was required to register a company in California. He had already registered an earlier form of BCX International in California, and allowed the registration to lapse, which in the court's view was done probably for the specific purpose of avoiding California's corporation tax scheme.

"The fact that a prior company, and perhaps the same company registered in California, indicates to the court's satisfaction that Mr. Cai was aware of his company's registration obligations. The court would also note that his trial testimony was significant in that regard, as well, because he testified that it was not registered. And then when he realized that he'd said that, he changed his testimony.

"He has had legal counsel in California for a number of years, Ms. Tam, and he certainly . . . had legal counsel in Massachusetts. Notably absent from any papers that

have ever been filed to the court is any claim by Mr. Cai or anyone else that an attorney advised him that BCX International, Inc. did not have to register in California.

"The court had an opportunity to observe Mr. Cai during the trial, and it heard Mr. York testify that their dealings were in English. Now, the extent of Mr. Cai's fluency in English was a matter in dispute. However, the court is confident that he understands more than enough English to understand the transactions and the situation that faced him in the courthouse and in this lawsuit.

"Therefore, the court is of the opinion that good and sufficient cause exists for the court to restore the financial status quo that was upset by the fact that the court had to grant a mistrial, which meant that the defendant's legal fees that they incurred in the immediate preparations for and attendance at trial, and the costs associated with bringing the motion to dismiss and the costs associated with bringing the motion for sanctions all are recoverable under [Code of Civil Procedure section] 128.7[, subdivisions] (b), (c) and (d).

"Such an award is an appropriate deterrent to future conduct of this sort by the plaintiff. The court is guided in this regard by the fact that it has concluded that BCX International, Inc. USA by and through Mr. Cai does appear to have deliberately avoided California law in doing what it did. The court has made an effort to see that the fees are limited to those fees and costs related to the trial."

The court's order regarding plaintiff's corporate status and plaintiff's payment of defendant's fees and costs was filed on January 12, 2007, following hearings on October 31, 2006 and December 15, 2006. Handwritten interlineation on the order indicated that the court had received no objection to the proposed order. The order stated the court's findings, notably, that BCX regularly conducted intrastate business within the State of California, was required to comply with Corporations Code sections 2105 and 2203, subdivision (c), and, having failed to do so, had no capacity or right to file or prosecute the action. The court further found York had not waived his right to raise the issue upon learning of the facts. As for the fees and costs, the court ordered BCX to pay the sum of $118,584.95 within 30 days of entry of the order, noting that, "[d]espite being

provided ample time to do so, Plaintiff did not object to the amount being sought by Defendant and the Court deems such fees and costs fair and reasonable." Failure to pay the sanctions could result in further sanctions and/or penalties, including terminating sanctions. Failure to timely pay the sanctions would also enable York to immediately seek a writ of execution for that amount. "Additionally, Plaintiff cannot prosecute this action further without timely payment of these fees and costs to Defendant. . . ."

At a hearing on March 12, 2007, the court set April 11, 2007 for an OSC re status of the payment of the attorney's fees and costs associated with the court's earlier ruling on attorney's fees and set the case for trial on September 24, 2007.

On April 9, 2007, BCX filed its notice of appeal of, among other orders, the court's January 12, 2007 order regarding plaintiff's corporate status and plaintiff's payment of defendant's fees and costs. In its opening brief, BCX stated it "is proceeding with the appeal of the Order imposing Sanctions against itself only."

DISCUSSION

A. The Trial Court's Decision to Stay the Action

BCX appears to contend the trial court erred or abused its discretion in declaring a mistrial and staying the action to allow BCX to comply with California's registration requirements for foreign corporations. BCX argues the court should have permitted the jury trial to proceed. As quoted above, BCX's counsel agreed to the mistrial and thereby waived any error, even assuming the ruling was appealable. (*Nevada County Office of Education v. Riles* (1983) 149 Cal.App.3d 767, 779 [party that expressly agrees to trial court's action cannot challenge that action on appeal]; *Juarez v. Superior Court* (1982) 31 Cal.3d 759, 765 ["no appeal lies from an order granting a mistrial"].) As for the decision to stay the action, the trial court neither erred nor abused its discretion.

To transact business in California, an out-of-state or "foreign" corporation must obtain a "certificate of qualification" from the Secretary of State. (Corp. Code, § 2105, subd. (a).) "The purpose of the certificate of qualification is to facilitate service of process and to protect against state tax evasion. [Citation.]" (*United Medical*

Management Ltd. v. Gatto (1996) 49 Cal.App.4th 1732, 1736, 1741.) Although a nonqualified foreign corporation may file an action or defend itself in California courts, it may not "*maintain* any action or proceeding . . . commenced prior to compliance with [s]ection 2105[.]" (Corp. Code, § 2203, subd. (c), italics added; *United Medical Management Ltd. v. Gatto, supra,* 49 Cal.App.4th at p. 1739.) By temporarily halting lawsuits, the statute "encourage[s] qualification, rather than . . . penalize[s] the failure to qualify earlier." (*United Medical Management Ltd. v. Gatto, supra,* 49 Cal.App.4th at p. 1741.)

A foreign corporation's failure to obtain the certificate of qualification does not affect its standing but rather its capacity to maintain the action. (*Color-Vue, Inc. v. Abrams* (1996) 44 Cal.App.4th 1599, 1603-1604 [involving California corporation suspended for failure to pay franchise taxes].) The corporation's capacity to sue is not an element of a cause of action; generally speaking, a plaintiff's allegation that it is a corporation suffices to show that it has the requisite capacity. (*Color-Vue, Inc. v. Abrams, supra,* 44 Cal.App.4th at p. 1605.) "[A] plea in abatement such as lack of capacity to sue 'must be raised by defendant at the earliest opportunity or it is waived.'" (*Color-Vue, Inc. v. Abrams, supra,* 44 Cal.App.4th at p. 1604.) Doing so "enables the . . . corporation to obtain a judicial determination as to whether it is in fact transacting intrastate business." (*United Medical Management Ltd. v. Gatto, supra,* 49 Cal.App.4th at p. 1740.)

Defendant bears the burden of showing that the action arises out of the foreign corporation's transaction of intrastate business and that the foreign corporation filed suit before qualifying to transact business in California.[3] (*United Systems of Arkansas, Inc. v. Stamison* (1998) 63 Cal.App.4th 1001, 1007.) Once defendant makes this showing, the

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[3] BCX argues in one heading that the trial court erroneously placed the burden on BCX to prove it had the capacity to sue. To the extent the trial court erred, there was no prejudice because, as explained below, substantial evidence supports the trial court's finding that BCX had transacted intrastate business without registering and that until it satisfied the registration requirements, BCX could not maintain the instant action.

court should stay the action until the corporation satisfies the qualification requirements. (*United Medical Management Ltd. v. Gatto*, *supra*, 49 Cal.App.4th at pp. 1740-1741 ["The qualification statute is enforced, in part, by temporarily halting lawsuits"].) Upon payment of the necessary fees, penalties, and taxes, the foreign corporation may then maintain its action. (*United Medical Management Ltd. v. Gatto*, *supra*, 49 Cal.App.4th at p. 1741 [qualification restores the foreign corporation to full legal competency and its prior transactions are given full effect].)

1. Substantial Evidence Supported the Trial Court's Finding That York Timely Raised BCX's Failure to Register and Thus Did Not Waive The Defense

Unlike the issue of standing, a plea for relief based upon a suspended corporation's lack of capacity is effectively a plea in abatement, a disfavored concept in law that, if not properly asserted, may be forfeited. (*Traub Co. v. Coffee Break Service, Inc.* (1967) 66 Cal.2d 368, 370; *Color-Vue, Inc. v. Abrams*, *supra,* 44 Cal.App.4th at p. 1604.) BCX argues on appeal that its failure to register in California "is public record which defendant can easily verif[y]." Further, "[t]he delay is caused by the lack of diligence on [York's] part."

BCX's "allegation . . . that it is a corporation is sufficient to show that it has the general capacity to sue." (*Color-Vue, Inc. v. Abrams*, *supra,* 44 Cal.App.4th at p. 1605.) Moreover, nothing on the face of the pleading would have supported a demurrer on this ground. To the contrary, BCX asserts that in the caption and body of its verified first amended complaint, it always stated it was a "MA corporation." Similarly, in the second and third amended complaints, BCX stated it was a Massachusetts corporation. BCX even argues that York relied in *his* answer and discovery responses on BCX's statement that BCX (the Massachusetts BCX) was the plaintiff.

In hindsight, York would have done well to verify BCX's corporate status, as BCX suggests. In these circumstances, however, the trial court did not err in finding York did not waive the issue. Not until Mr. Cai testified at trial was there any reason to suspect that this Massachusetts corporation was not registered in California as a foreign

corporation.[4] Once the issue arose, however, York served and filed a motion to dismiss and request for payment of costs and fees the next court day. The trial court stated: "[I]n my view [York's motion to dismiss raising BCX's lack of capacity was] an immediate response to the information." We agree. There was no waiver.

2. Substantial Evidence Supported the Trial Court's Finding That BCX Was Required to Register Because It Met the Criteria for "Conducting Intrastate Business"

Section 191, subdivision (a) of the Corporations Code defines the term "transact intrastate business" as "entering into repeated and successive transactions of its business in this state, other than interstate or foreign commerce." Subdivision (b) provides that a foreign corporation shall not be considered to be transacting intrastate business merely because its subsidiary transacts intrastate business or based on its status as any one or more of the following: "(1) A shareholder of a domestic corporation. [¶] (2) A shareholder of a foreign corporation transacting intrastate business. [¶] (3) A limited partner of a domestic limited partnership. [¶] (4) A limited partner of a foreign limited partnership transacting intrastate business. [¶] (5) A member or manager of a domestic limited liability company. [¶] (6) A member or manager of a foreign limited liability company transacting intrastate business." (Corp. Code, § 191, subd. (b).) In addition, the statute sets forth a nonexclusive list of activities that shall not be considered to be transacting intrastate business within the meaning of subdivision (a) solely by reason of carrying on one or more of them in this state: "(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes. [¶] (2) Holding meetings of its board or

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[4] Contrary to BCX's argument, it is unclear whether even an extensive name search through the California Secretary of State would have identified BCX (Massachusetts). (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2008) ¶ 6:57.1, pp. 6-14 to 6-15 [neither online nor mail-ordered business entity records search "will identify an out-of-state corporation that has not qualified to do business in California"].)

shareholders or carrying on other activities concerning its internal affairs. [¶] (3) Maintaining bank accounts. [¶] (4) Maintaining offices or agencies for the transfer, exchange, and registration of its securities or depositories with relation to its securities. [¶] (5) Effecting sales through independent contractors. [¶] (6) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where those orders require acceptance outside this state before becoming binding contracts. [¶] (7) Creating evidences of debt or mortgages, liens or security interests on real or personal property. [¶] (8) Conducting an isolated transaction completed within a period of 180 days and not in the course of a number of repeated transactions of like nature." (Corp. Code, § 191, subd. (c).)

At the hearing on the motion to dismiss, the trial court stated it did not believe it was material whether BCX does business all over the world or where its principal place of business was located. The court's minute order of November 7, 2006 stated: "As part of its business, [BCX] imports goods from China into Southern California ports, where the goods are off-loaded, and delivered to customers. Defendant York and his now bankrupt companies were based in California. The goods were delivered to them here. . . . Mr. Cai, the principal of BCX USA, communicated with York from a location in California."

BCX argues that it was conducting interstate business with the [bankrupt] corporate defendants from 2000 to 2002, when these defendants failed to pay for goods shipped to them. Beginning in the summer of 2002, BCX had "numerous communications and business activities with the Corporate Defendants which the defendant Merv York argued for the first time (three and a half year[s] after the commencing of the case) during a jury trial that Plaintiff BCX was considered as doing business in California and has to be registered in California." BCX maintains it offered evidence that it is a Massachusetts corporation, that its bank account is located there, that it paid federal and Massachusetts state taxes, and that it imported goods "as shown in its bill of lading."

BCX misses the point. As the trial court noted, BCX did not object to York's declaration in support of his motion to dismiss. York there stated that BCX had at least two addresses in San Bernardino, California, as well as a fax number in the Inland Empire. Numerous contracts between BCX and CDR used one or the other of these addresses and the fax number. York communicated with Cai by this 909 area code fax number. York and Cai signed sales contracts either in person at CDR's offices in Carson, California or York would sign and fax the contract to Cai at the 909 number, and Cai would fax back the fully executed version from the same 909 fax number. BCX maintained control over goods shipped into California until they were shipped to their final destination. In sum, the record contains substantial evidence to support the trial court's finding that BCX, a Massachusetts corporation, conducted intrastate business in California and was required to register accordingly.

3. The Trial Court Did Not Abuse Its Discretion in Staying the Action To Enable BCX to Satisfy the California Registration Requirements

As discussed above, BCX waived its argument that the trial court erred in ordering a mistrial. Moreover, the trial court's decision to stay the action – to benefit BCX – was not only allowable, but the preferred procedure. (*United Medical Management Ltd. v. Gatto, supra*, 49 Cal.App.4th at p. 1740 [if defendant establishes that a foreign corporation has failed to qualify with the Secretary of State, "the matter should be stayed to permit the foreign corporation to comply"].) Regardless of whether the trial court *could* have decided to continue with the trial (*Color-Vue, Inc. v. Abrams, supra*, 44 Cal.App.4th at p. 1606, fn. 7), doing so here was not a realistic option. BCX did not request a brief stay to correct the registration defects but rather steadfastly maintained it had no such obligation to register. Not until the trial court found the company had indeed transacted business in California and was therefore required to register as a foreign corporation in order to maintain its action did counsel seek an opportunity to satisfy the registration requirements. Even then, counsel requested 60 days which, due to BCX's accountant's own errors, ultimately stretched to over five months. The trial court did not abuse its discretion in staying the action.

B. The Trial Court's Imposition of Sanctions

BCX contends the trial court abused its discretion in imposing sanctions pursuant to Code of Civil Procedure section 128.7, subdivisions (b)(1) and (c)(1) in the amount of $118,584.95. BCX argues it showed the court it was a Massachusetts corporation but the trial court ruled it had transacted intrastate business and was required to be registered. BCX thus retained an accountant to prepare and file California state tax returns and "paid for all the payments, penalties and interest[] and obtained a Certificate of Good Standing which has been submitted to the trial court." As best we can determine, BCX appears to argue the trial court's imposition of sanctions simply was unfair. We disagree.

"An attorney or unrepresented party who presents a pleading, motion or similar paper to the court makes an implied 'certification' as to its legal and factual merit; and is subject to sanctions for violation of this certification." (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2008) ¶ 9:1135, p. 9(111)-13 to 9(111)-14; Code Civ. Proc., § 128.7.) The statute provides in relevant part as follows: "(b) By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met: [¶] (1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." (Code Civ. Proc., § 128.7, subd. (b)(1).)[5] This section has been interpreted to allow sanctions against a represented party. (*Burkle v. Burkle* (2006) 144 Cal.App.4th 387, 399 ["Code of Civil Procedure section 128.7 allows sanctions . . . against parties and attorneys when pleadings are presented primarily for an improper

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[5] Section 128.7 also provides for a 21-day "safe harbor" waiting period during which the party served with the motion has a chance to correct the violation. (Code Civ. Proc., § 128.7, subd. (c)(1).) If the party does correct the violation, the sanctions motion cannot be filed or further pursued. (Code Civ. Proc., § 128.7, subd. (c)(1).) BCX does not contend that York violated the safe harbor provision.

purpose, such as to harass or cause a needless increase in the cost of litigation"]; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2008) ¶ 9:1230.1, p. 9(111)-35.) The statute further provides that "[a] sanction imposed for violation of subdivision (b) shall be limited to what is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated." (Code Civ. Proc., § 128.7, subd. (d).) The statute expressly permits payment to the moving party of "some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation." (*Ibid*.) We review the trial court's award for an abuse of discretion. (*Guillemin v. Stein* (2002) 104 Cal.App.4th 156, 167.)

In the minute order of November 7, 2006, the court stated the factual basis for sanctions, most notably, that "Mr. Cai probably made a deliberate decision to engage in intrastate business without registering." The court found his testimony evasive, which "appear[ed] to have been part of a scheme to conceal BCX USA's illegal status." Perhaps most significant: "The trial was a waste of time for all concerned, including the jury. To gamble that the company's lawsuit could proceed to judgment without its status being discovered was a bad faith action or tactic." The trial court then directed York to file a supplemental schedule of fees and costs allocated to trial work and nontrial work and continued the hearing date.

The trial court explained its finding in detail at the December 15, 2006 hearing. The court clarified its view on the issue of Mr. Cai's fluency in English: "All I said in my tentative was that I think he understands enough of how things work, since he had legal counsel in Massachusetts and he had a prior company registered in California, the man is not a novice, he's a businessman, and I think when he needs to get help, he knows how to get help. And I think he understood exactly what he was doing when he continued to do business in Southern California after he allowed the California corporation registration to lapse." The court concluded: "It will be the order of the court that California Code of Civil Procedure section 128.7[, subdivisions] (b)[,] (c) and (d) do allow the imposition of monetary sanctions against a party, in this instance, BCX International U.S.A., for the fact that the defendant was caused to incur fees and costs for

a trial that was unnecessary and brought for an improper purpose because BCX International U.S.A. was not registered in California when it should have been, and [its] principal knew that it should have been." By order filed on January 12, 2007, the court ordered BCX to pay York $118,584.95 for his legal fees and costs incurred in preparing for and conducting trial.

Beyond stating the trial court abused its discretion, BCX fails to offer any argument or authority to support its contention. As the portions of the record quoted above amply demonstrate, the trial court acted within the bounds of its discretion in granting the motion for attorney's fees and costs and ordering BCX to pay sanctions to York. We find no abuse of discretion.

C. The Trial Court's Alleged Racial Prejudice

BCX contends the trial court's remarks about Mr. Cai's fluency in English gave the "appearance the court held preconceived ideas of Chinese Immigrant." BCX argues the comments "raise doubts about the fairness and impartiality of the proceeding." We do not take charges of racial (or any other form of) prejudice lightly. Nonetheless, upon review of the two citations to the transcript, we conclude they are devoid of any "preconceived ideas" about Chinese immigrants and fail to support BCX's claim of racial prejudice. We reject this contention.

DISPOSITION

The portion of the trial court's order filed on January 12, 2007, directing BCX to pay York the sum of $118,584.95, is affirmed. Respondent shall recover his costs of appeal.

NOT TO BE PUBLISHED

WEISBERG, J.*

We concur:

MALLANO, P.J.

ROTHSCHILD, J.

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*Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.